

SENATE BILL 1977

By Massey

AN ACT to amend Tennessee Code Annotated, Title 34, Chapter 6, Part 3 and Title 37, Chapter 5, Part 5, relative to the Power of Attorney for Care of a Minor Child Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-6-302, is amended by adding the language "or a form that substantially complies with the model form provided by the department of children's services" immediately after the language "department of children's services".

SECTION 2. Tennessee Code Annotated Section 34-6-302, is further amended by adding the following as new subsections (c) and (d), and redesignating the remaining subsection accordingly:

(c) Except as otherwise provided in law, the execution of a power of attorney delegating temporary caregiving authority shall not, without other evidence, constitute abuse, as defined in § 37-1-102, or abuse, neglect, or endangerment, as described in § 39-15-401. The mere execution of a power of attorney delegating temporary caregiving authority shall not, without other evidence, trigger an investigation by the department of children's services. However, nothing in this subsection shall be interpreted to prevent the department of children's services or a law enforcement agency from investigating reports or allegations of child abuse, neglect, endangerment, or other mistreatment of a child.

(d)

(1) Under a delegation of temporary caregiving authority authorized by this part, the children who are the subject of the delegation shall not be

considered placed in foster care or otherwise in the custody or control of the department of children's services.

(2) Any person to whom temporary caregiving authority is granted by a parent under this section shall not be considered a foster parent, child care facility, or other out-of-home placement, nor be subject to the requirements of foster care licensing statutes or regulations or any other child care facility licensing statutes or regulations.

SECTION 3. Tennessee Code Annotated, Title 34, Chapter 6, Part 3, is amended by adding the following as a new section:

34-6-311.

(a)

(1) A parent facing temporary hardships, as described in § 34-6-302(a)(1), may delegate temporary caregiving authority regarding a minor child with the assistance of a qualified nonprofit organization.

(2)

(A) For purposes of this section, "qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under § 501(a) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 501(a), as an organization described in § 501(c)(3) of that code, codified in 26 U.S.C. § 501(c)(3), established to assist parents with the process of delegating temporary caregiving authority in accordance with this section, to help parents overcome hardships and provide a safe, stable home for children by identifying an appropriate temporary placement for children who are the subject of the delegation, and to provide services and resources to support the children, parents, and other persons authorized to provide temporary care for the children under the delegation.

(B) If a qualified nonprofit organization as described in subdivision (a)(2)(A) is not a licensed child-placing agency, the qualified nonprofit organization shall enter into an agreement with a licensed child-placing agency wherein the licensed child-placing agency agrees to provide consultation and clinical supervision of services offered by the qualified nonprofit organization.

(C) A qualified nonprofit organization that enters into an agreement with a licensed child-placing agency under subdivision (a)(2)(B) shall be excluded from licensing as a child care agency pursuant to § 37-5-503.

(3)

(A) Unless the services provided by a qualified nonprofit organization are deemed appropriate for the family's needs by the department of children's services, this subsection does not apply to a parent whose child is the subject of an ongoing investigation by the department of children's services into an allegation of abuse, as defined in § 37-1-102, or abuse, neglect, or endangerment, as described in § 39-15-401.

(B) Nothing in this subsection shall be interpreted as preventing the department of children's services from referring families who are receiving services from the department, or who are the subject of an ongoing investigation, to a qualified nonprofit organization.

(C) During any investigation by the department of children's services that does not result in an out-of-home placement, a department investigator shall provide information to the parent about community

service programs that provide support services for families in crisis, including the services of qualified nonprofit organizations, and may make referrals to such programs as appropriate to meet the family's needs.

(b)

(1)

(A) Except as provided in subsection (b)(2), a delegation of temporary caregiving authority made under this section expires on the first anniversary of the date the power of attorney is executed unless an earlier date is specified in the power of attorney. A parent having legal custody of the child may revoke or withdraw the power of attorney at any time.

(B) Upon the expiration or termination of the power of attorney executed under this section, the child shall be returned to the physical custody of the child's parent as soon as reasonably possible.

(C) If, following the one-year expiration of the power of attorney executed under this section, the parent delegating temporary caregiving authority is still undergoing a hardship preventing the parent from caring for the child, the delegation may be extended for an additional six (6) months by the execution of a new power of attorney accompanied by an affidavit stating with specificity the details of the hardship and the reasons the extension of the delegation beyond the one-year time limit is necessary.

(2) A parent who is a member of the armed forces of the United States, including any reserve component thereof, or the commissioned corps of the national oceanic and atmospheric administration or the public health service of

the United States department of health and human services detailed by proper authority for duty with the armed forces of the United States, or who is required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty, may delegate the powers designated in subsection (a) for a period longer than one (1) year if on active duty service. The term of delegation, however, may not exceed the term of active duty service plus thirty (30) days.

(3) In addition to the execution requirements of §§ 34-6-302(b) and 34-6-303, a power of attorney entered into with the assistance of a qualified nonprofit organization shall also be signed by an authorized representative of the qualified nonprofit organization.

(c) The department of children's services may promulgate rules related to the following for the purpose of implementing this section:

(1) Background screening requirements for persons to whom temporary caregiving authority is delegated under this section as well as staff and volunteers of the qualified nonprofit organization;

(2) Compliance with department of children's services rules for reporting child abuse and neglect;

(3) Training requirements to ensure that staff, volunteers, and persons to whom temporary caregiving authority is delegated under this section are trained in the rights, duties, and limitations associated with providing care for a child as provided in this section, including training in the prevention and reporting of suspected child abuse or neglect;

(4) Standards for the supervision of a qualified nonprofit organization by a licensed child-placing agency under subsection (a)(2);

(5) Standards for ongoing supervision by qualified representatives of all case-related activities of the qualified nonprofit organization or licensed child-placing agency, including volunteers trained and monitored by the licensed child-placing agency; and

(6) Procedures for verifying that the department of children's services is not providing services or does not have an open investigation of child abuse, neglect, or endangerment as defined in § 37-1-102 and § 39-15-401 for the child or parent seeking the services of the qualified nonprofit organization.

SECTION 4. Tennessee Code Annotated, Section 37-5-503, is amended by adding the following as a new subdivision:

A qualified nonprofit organization, as defined in § 34-6-311(a)(2)(A), that has entered into an agreement with a licensed child-placing agency as required by § 34-6-311(a)(2)(B) for the purpose of assisting a parent of a child with the process of delegating temporary caregiving authority in accordance with § 34-6-302;

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.